

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

BALDOMERO DURAN, JR  
TDCJ-CID NO. 1687578

v.

RICK THALER

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§  
§  
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§

C.A. NO. C-11-325

**OPINION DENYING MOTION FOR APPOINTMENT OF COUNSEL**

Petitioner is a state inmate currently incarcerated at the Gib Lewis Unit in Woodville, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging his conviction. (D.E. 1). Pending is petitioner's letter-motion construed as a request for appointment of counsel. (D.E. 9).


There is no constitutional right to counsel in federal habeas proceedings. Wright v. West, 505 U.S. 277, 293 (1992) (Constitution "guarantees no right to counsel on habeas"); see also Elizalde v. Dretke, 362 F.3d 323, 329 (5th Cir. 2004) (same); Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992) (same). Rule 8(c) of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues that mandate an evidentiary hearing. Here, his request for counsel is premature because at this stage in his case there are no factual issues requiring an evidentiary hearing. Indeed, respondent has not yet been served let alone filed an answer.

Counsel will be assigned sua sponte if there are issues that mandate an evidentiary hearing be held. Moreover, the Court may appoint counsel if discovery is ordered and there are issues necessitating the assignment of counsel. See Rule 6(a) of the Rules Governing § 2254 Cases; Thomas v. Scott, 47 F.3d 713, 715 n.1 (5th Cir. 1995).

Petitioner requests a court-appointed attorney related to respondent's motion for leave to file. He expresses some confusion regarding activity related to Duran v. Thaler, C-11-66 (S.D. Tex.). That action was a state habeas petition that was dismissed without prejudice on May 13, 2011, and final judgment was entered.

Accordingly, petitioner's motion for the appointment of counsel, (D.E. 9), is DENIED without prejudice.

ORDERED this 5th day of December 2011.



BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE